

**ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL**

Wednesday, September 18, 2019

9:00 a.m.

Room A, MAC

Little Rock, Arkansas

- A. **Call to Order.**
- B. **Reports of the Executive Subcommittee.**
- C. **Rules Referred to the Senate Interim Committee on Transportation, Technology, and Legislative Affairs and the House Interim Committee on Public Transportation.**
 - 1. **COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION (Ms. Jennifer Dedman)**

- a. **SUBJECT: Specifications Governing School Bus Design**

DESCRIPTION: The Commission for Arkansas Public School Academic Facilities and Transportation Rules for the Specifications Governing School Bus Design were last updated in 2012. Since that time, there have been changes to the Federal Motor Vehicle Safety Standards, 49 C.F.R. Part 571, and the specifications of the National Congress on School Transportation. These rules have been amended to reflect changes in bus safety standards and specifications.

PUBLIC COMMENT: A public hearing was held on December 27, 2018. The public comment period expired on January 18, 2019. The agency provided the following summary of the comments that it received and its responses thereto:

Name: Mike Wingerter, Central States Bus Sales (Bluebird)

Comment: I was wanting to address the mandatory of air brakes on all school buses with 65 passenger and greater for capacity. I'm not opposed to that at all. What I would like to see put in place—we were prior to the last spec meeting a hydraulic brake state.

Missouri is a hydraulic state right now. It's a safe brake. There's nothing wrong with it. School districts in Arkansas, especially in the rural areas—their money is based on enrollment totally. There's no dedicated transportation funding for the State of Arkansas. So what happens is drivers now have to be required to go get their air brake endorsement, which is not just go take an air brake test anymore. You have to take the whole test. When they do, instead of—I use this as an example—making \$15 an hour driving a school bus, they can go right down the street and drive a dump truck and make twice the money per hour because of their air brake endorsement. With that being said, the districts in the rural areas that have less money can afford hydraulic brake buses. They're cheaper than the air brake buses. They're also easier to obtain drivers and maintain drivers. Just like to see that as an option. Maybe not in the big buses—the type D buses—but at least in the type C buses. Seventy-seven passengers is the most capacity you can do in a type C bus. Why not make it an option?

Agency Response: Comment considered. No change made. Districts will not be required to retire their current buses, including those which may have hydraulic brakes, but all buses purchased after the effective date of these rules should have air brakes, due to safety concerns with hydraulic brakes.

Name: Lucas Harder, Arkansas School Boards Association

Comment (1): 1.01: There is a “the” missing from between “as” and “Commission.”

Agency Response: Comment considered. The change was made.

Comment (2): 9.01-9.04: While this is simply moving the existing language from Section 37.00, I would recommend adding “Rear” in front of “Bumper” to more closely match the language in 8.01 through 8.03 and to more easily distinguish between the two sets of bumpers without needing to reference the Rules section.

Agency Response: Comment considered. The change was made.

Comment (3): ~~49.05~~48.05: There is an unnecessary “r” here so that “no” has become “nor.”

Agency Response: Comment considered. The change was made.

Comment (4): ~~52.04~~51.04: This is duplicative language with that in ~~40.01~~39.01.

Agency Response: Comment considered. No change made.

Comment (5): 70.00: This appears to be duplicative of 14.00.

Agency Response: Comment considered. No change made. Section 14.00 covers the entire exhaust system.

Comment (6): 78.08: This should be 12.03 instead of 11.03.

Agency Response: Comment considered. The change was made.

Comment (7): 83.01: “or transit bus” is included twice.

Agency Response: Comment considered. The change was made.

Comment (8): 84.13: The “shall be” in “CNG buses shall have a positive, quick-acting (1/4 turn) shut-off control valve shall be installed in” is unnecessary.

Agency Response: Comment considered. The change was made.

Following the July 19, 2019 meeting of the Administrative Rules Subcommittee, and the August 1, 2019 meeting of the House and Senate Transportation Committees to which these rules had been referred, Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Is it Section 7.02.3 of the Rules with which there seems to be concern regarding the requirement for air brakes?

(2) If so, it appears from the mark-up submitted that that section is found in, and part of, the current rules, dated October 26, 2012, and that the language of the section is not being changed in this rulemaking. Is that correct?

(3) In other words, the rule providing that “[a]ll school buses with a maximum design capacity of 65 passenger or above, or a GVWR above 26,001 lbs. shall be equipped with air brakes” is already in effect?

RESPONSE: The answer to all three of your questions is yes. The requirement for air brakes on buses with more than 65 passengers or over 26,001 lbs. was added to these rules sometime prior to 2012. Part of our difficulty in getting stats about hydraulic brakes is that we have required air brakes on this type of bus for so long that all buses purchased for approximately the last decade meeting that passenger and weight requirement have air brakes, not hydraulic brakes. But, we are actively looking for data and will continue to look.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: The Commission for Arkansas Public School Academic Facilities and Transportation shall have responsibility for drawing up the minimum specifications for all school buses. *See* Ark. Code Ann. § 6-21-304(b)(2). Changes to the rules were also made in light of Act 375 of 2017, sponsored by then-Representative Mark McElroy, which served to regulate equipment required for school buses; to require that certain school buses be equipped with seat belts; and to enforce the use of seat belts on school buses equipped with seat belts.

D. Rules Referred to the Senate and House Interim Committees on Education.

1. DEPARTMENT OF EDUCATION (Ms. Courtney Salas-Ford)

a. SUBJECT: Special Education High-Cost Occurrences

DESCRIPTION: Arkansas Code Annotated § 6-20-2303(21) specifies that “Special Education High-Cost Occurrence” funding shall be pursuant to rules promulgated by the State Board. Changes to the High-Cost funding formula are being proposed to promote the equitable distribution of resources for students with the most unduly expensive and extraordinary costs associated with the services they need, regardless of the district they attend. High-Cost funding is intended to assist districts with the costs of individual students who require special education and related services beyond the routine and normal costs, not to supplement funding for school districts.

- The proposed rule maintains the current \$15,000 threshold, but does not allow reimbursement of costs up to the \$15,000 threshold.
- The proposed rule increases the percentage of reimbursement a district may receive for the amount above the threshold.

Proposed Rule	Current Rule
District is responsible for 100% of amount up to \$15,000 after adjusted for offsets.	District is responsible for 0% of amount up to \$15,000 after adjusted for offsets.
District is responsible for 0% of adjusted amount from \$15,001 up to \$65,000.	District is responsible for 20% of adjusted amount from \$15,001 to \$50,000.
District is responsible for 20% of any amount above \$65,000 up to \$100,000.	District is responsible for 50% of any amount above \$50,000 up to \$100,000.

Districts have the following funding sources available to provide special education and related services to students with disabilities:

- IDEA Part B - approximately \$1,760 per student *
- Medicaid *
- Special Education Services (Extended School Year) - \$74 per day in FY18 *
- ADM - \$6,781 per student
- Student Growth and Declining Enrollment
- Early Childhood Special Education State Funding - \$16,897,920 appropriated
- Residential Centers / Juvenile Detention Centers - \$16,345,087 appropriated
- Special Education Services (Special Education Supervisor) - \$1,787,247 in FY18

In addition to the \$15,000 threshold, the 2006 Odden-Picus adequacy report recommended that catastrophic (now, high-cost) funding be made available when costs exceed state and federal funding received by districts including IDEA Part B and Medicaid. Under the current and proposed calculation methods, only the first three funds, as indicated by asterisks, are set-aside when determining the high cost of a student.

PUBLIC COMMENT: A public hearing was held on March 4, 2019. The public comment period expired on March 26, 2019. The Department provided the following summary of the comments that it received and its responses thereto:

Name: Tita De Vore, Rogers Public Schools, and on behalf of the Arkansas Association of Special Education Administrators
Comment: Our district has concerns about the proposed changes in catastrophic funding revolving around the committee work, the

“winners and losers” that the funding will create and the amount of time the submission process takes for districts.

A catastrophic committee was organized in February 2018. The committee met one time. There has been no summary from that meeting. There were 3 goals for the committee to consider; first, the reduction of paperwork. It takes countless hours to record the required data when in reality the department already has access to this information. The second area was to encourage more districts to seek reimbursement. The department produced a document with proposed reimbursement totals under the new rules. 90 districts will lose money and 74 will gain money. A total of 164 districts requested reimbursement during that year. If more districts lose money how is this encouraging for other and additional districts to request reimbursement? The third goal was to have a better understanding of the definition of catastrophic reimbursement and a profile of a student who would qualify for reimbursement.

According to a slide presentation from the Arkansas Department of Special Education, considerations for proposed changes include the promotion of “equitable distribution of resources for students with the most unduly expensive and extraordinary costs associated with the special education services they need, regardless of the school they attend.” However, in reality a student that meets the Catastrophic Reimbursement profile (ex. weekly speech therapy, physical therapy, occupational therapy, specialized transportation, one-on-one instructional support, and nursing) in a district with higher salaries and more available resources, lower student to staff ratios will yield higher balances therefore making it much easier to achieve the proposed required “more than \$15,000” threshold. In turn, this will result in a higher reimbursement. The same student with the same profile and programming in a district with minimum salaries and limited resources, high cost contracted service providers, and higher student to staff ratios will yield a much lower balance, therefore the requested reimbursement will be much lower. If these proposed rules were to pass and considering the above scenario this will only discourage districts from the process. If districts had a difficult time meeting the current threshold, it would be impossible for them to meet them under the proposed regulations.

Should the proposed regulations go into effect for the 2019-2020 school year, the districts will also be asked to submit all of the information by April 1st rather than the current deadline of May

1st. With the number of hours it takes districts to justify their requests for reimbursement, it will only further discourage districts in requesting reimbursement. They simply cannot spend the required hours it takes as well as perform or meet the day to day job demands and requirements of a special education supervisor. The changes will negatively impact reimbursement for services for students with disabilities across the state and we fear that the changes will not promote additional submissions from other districts.

Agency Response: The intent of the proposed revisions to these rules is to create a more equitable distribution of the funds available to assist school districts with students who meet the definition of “special education catastrophic [now, high-cost] occurrence” in state statute and restructure the process of determining eligibility for funding to meet its intended purpose. Each student must be considered individually in determining the eligibility and need for funding, and not a total amount of supplemental funding for a district.

A committee of stakeholders was convened on April 4, 2018, to review current catastrophic funding procedures, including the funding formula, current allowable expenses, and required documentation, consider opportunities for streamlining the current process, review other states’ methods for distributing catastrophic funds, compare differing processes, and make recommendations for revisions to the current process resulting in more equitable distribution.

As a result of the committee’s work, the following changes will be implemented to reduce the burden to districts in requesting catastrophic funding:

- prior year student information will automatically be carried over into the current year;
- the application will include basic student information and description of services with estimated costs; the budget accompanies the application; and approval of the application is not based on using correct fund codes;
- after the threshold is met, the district will list the materials, services, support, and personnel that is being submitted for reimbursement;
- all applications will be reviewed by a team of ADE staff to determine allowable and eligible costs; and
- the ADE finance office will review the budgets.

It is believed that these improvements in streamlining the catastrophic process as well as further information being provided to districts will encourage more districts to participate. These changes aim to address the impact that the highest-cost students have on all school districts, regardless of the size of the district, which will benefit all school districts and decrease the amount of time necessary for staff to seek funding.

Name: Ken Ramey, Superintendent, Siloam Springs School District

Comment: Our district leadership team has identified the following concerns about the impact adoption of these rules will have on school districts across the state:

- All things being equal, the difference between reimbursements under the current rules and those under the proposed rules will result in a loss of approximately \$192,000 to our district.
- The new rules are less likely to encourage districts to apply for catastrophic reimbursements because the amount of time required to document such expenses remains the same as under the current rules, while the amount of eligible reimbursements is likely to be less.
- The average cost of catastrophic occurrences for a majority of students who qualify under the current rules is between the proposed range of \$15,000-\$65,000 to earn 100% reimbursement. This is likely to result in a loss of revenue to cover those costs. For example, assume the total cost for services after offsets of one student is \$25,000. Under the current rules, the district is eligible to apply for the initial \$15,000 cost and 80% of the \$10,000 above the initial threshold or \$23,000. Under the proposed rules, the eligible reimbursement amount for this same student is \$10,000. That's a loss of \$13,000 for one student. The amounts submitted for 33 of our 34 students who qualified last year fit in the proposed range. Assuming this scenario is typical of those 33 students; under the new rules our district will have over \$429,000 less in eligible reimbursements even though costs remain the same.
- Districts cannot deny or reduce services based on funding amounts. Arkansas Code 6-41-205 guarantees the provision of all regular and special education, corrective, and supporting services required by children with disabilities to the end that they shall receive the benefits of a free and appropriate public education (FAPE). Arkansas Code 6-41-206(2)(b) states it is the responsibility of the local school district and state to provide FAPE based upon the individualized education program developed for children with disabilities. The high costs to districts for ensuring

FAPE for students with disabilities make it difficult to ensure ALL students receive the benefits of FAPE.

- Based on Table 11 on page 17 of your report on catastrophic funding dated June 18, 2018, the number of students who qualify for catastrophic occurrences and the number of districts and charters who apply for reimbursements related to these occurrences have steadily increased from 2015 to 2017, while the funding per student and percent of approved funds received has steadily decreased during the same time period. Projections indicate this trend will continue in the near future.

- Districts are paying what we believe is a disproportionate amount of the costs incurred for these “supporting services”; that’s approximately 61% or \$509,000 for our district in the 2017-2018 school year. The state has disregarded the guidance of its consultants Picus & Associates, who in 2003 noted the need to provide supplemental funding for catastrophic occurrences. “The small category of students with severe and multiple disabilities...are not found in equal percentages in all districts and **their excess costs need to be fully funded by the state.**” [Ellipsis and emphasis in original.]

- Adoption of the new rules will result in an increased cost for just one of many already unfunded mandates. Consider a few of these requirements - licensed art and physical education teachers in elementary schools; teacher-to-pupil ratios, counselors spend 90% of their time for direct and indirect counseling services, meeting the needs of students who demonstrate the characteristics of dyslexia, the Right to Read Act, implementation of the PLC process, the “recommendations” of the governor’s safety commission, and maintenance. We believe all these requirements benefit our students and support their success at school; however, the state rarely provides additional funds for implementation and when funds are available they are often miniscule when compared to actual costs.

Agency Response: The comparison between reimbursement under the current and proposed rules does not take into account the proration necessary under the current process in which claims were paid at approximately 40%. The comparison also does not calculate claims individually, which is the appropriate process, and would have actually resulted in an increase in funding under this scenario. The proposed changes to these rules are intended to address the high-cost of students impacting school districts, not supplement funding for school districts.

In addition to the \$15,000 threshold, the 2006 Odden-Picus adequacy report recommended that catastrophic [now, high-cost] funding be made available when costs exceed state and federal funding received by districts including IDEA Part B and Medicaid. Catastrophic funding was not intended to supplement special education programming, but it has become a mechanism for doing so in some districts. We believe by restructuring the formula to better align with the definition of a “catastrophic occurrence” in state statute, we will better be able to project if increased funding is necessary.

Name: Kelly Hayes, Comptroller, Springdale School District

Comment: The Springdale School District has approximately 22,000 students in grades K-12. Of that amount, approximately 2,375 students are served under the Individuals with Disabilities Education Act (IDEA). In the 2017-18 fiscal year, the Springdale School District had approximately 117 students that met the criteria established for catastrophic reimbursement. The total expenses submitted for catastrophic reimbursement for these students was \$2,644,685. Our reimbursement for that year was \$914,359.53 or 34.5% of the expenses submitted.

Under the proposed rule changes to catastrophic reimbursement, Springdale’s annual reimbursement would drop by almost three hundred thousand dollars. It is important to note that our district’s costs to educate these students will not decrease at all. In fact, the costs will increase due to higher salaries, increased costs of supplies and equipment, etc. This rule change will create a financial hardship on our district.

It is clear that the amount of funds currently eligible to reimburse districts for students with significant needs is insufficient (as evidenced by the 34.5% reimbursement rate previously mentioned). However, simply changing the criteria by which school districts are eligible for reimbursement creates winners and losers. Springdale would lose approximately one-third of its annual reimbursement, not because of any changes our district has made, but simply because of the proposed rule changes.

We encourage the Special Education Unit of the Arkansas Department of Education to leave the present rules in place or to consider alternative rules that do not negatively impact any one district by hundreds of thousands of dollars in lost reimbursement.

Agency Response: The intent of the proposed revisions to these

rules is to create a more equitable distribution of the funds available to assist school districts with students who meet the definition of “special education catastrophic [now, high-cost] occurrence” in state statute and restructure the process of determining eligibility for funding to meet its intended purpose; not to create “winners and losers.” Catastrophic funding was not intended to supplement special education programming, but it has become a mechanism for doing so in some districts. We believe by restructuring the formula to better align with the definition of a “catastrophic occurrence” in state statute, we will better be able to project if increased funding is necessary.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: The State Board of Education shall have the authority, acting pursuant to its rulemaking powers, to adopt rules for the implementation of the provisions of the Public School Funding Act of 2003 (“Act”), codified at Arkansas Code Annotated §§ 6-20-2301 through 6-20-2309. *See* Ark. Code Ann. § 6-20-2304(a). “Special education catastrophic occurrences” means individual cases in which special education and related services required by the individualized education program of a particular student with disabilities are unduly expensive, extraordinary, or beyond the routine and normal costs associated with special education and related services provided by a school district and funding is pursuant to rules promulgated by the State Board. *See* Ark. Code Ann. § 6-20-2303(21). During the pendency of these rules, the term “special education catastrophic occurrences” was amended to “special education high-cost occurrences,” pursuant to Act 757 of 2019, § 48, which was sponsored by Representative Bruce Cozart and became effective July 24, 2019.

E. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.

1. ARKANSAS STATE BANK DEPARTMENT (Mr. John Ahlen)

a. SUBJECT: 47-701.9 Fiduciary Powers and State Banks

DESCRIPTION: Arkansas Code Annotated § 28-69-202 permits banks and trust companies to operate collective investment funds. The Collective Investment Funds section of Arkansas State Bank Department (ASBD) Rule 47-701.9 was taken nearly verbatim from an Office of the Comptroller of Currency (OCC) rule. Since the adoption of Rule 47-107.9, the OCC has updated its rule on collective investment funds. ASBD would like to amend Rule 47-701.9 by repealing the existing language for Collective Investment Funds and replacing it by adopting the current OCC rule by reference. This will allow ASBD's rule to mirror any future changes to the OCC rule without requiring additional amendments to Rule 47-701.9.

PUBLIC COMMENT: A public hearing was held on May 2, 2019. The public comment period expired on May 2, 2019. The Department received no public comments. The proposed effective date is upon legislative review and approval.

FINANCIAL IMPACT: The Department reports that this rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 23-46-205(a), the Bank Commissioner shall be charged with the general supervision of financial institutions, the execution of all laws passed by the State of Arkansas relating to the organization, operations, inspection, supervision, control, liquidation, and dissolution of banks, bank holding companies, subsidiary trust companies, and the general commercial banking business of Arkansas, and such other duties as prescribed by law. See Ark. Code Ann. § 23-46-205(a). Additionally, the Commissioner shall have the power to issue such rules as may be necessary or appropriate to carry out the intent and purposes of all those laws and to issue cease and desist orders against any financial institution, or an officer, director, or employee of any financial institution, found to be violating federal banking laws or regulations, violating the banking laws of this state or State Bank Department regulations, violating any regulatory agreement, or

jeopardizing the safety and soundness of any financial institution.
See Ark. Code Ann. § 23-46-205(b)(1).

F. Adjournment.